ELECTION OF INVENTION

Applicants elect, with traverse, claims 1 – 4 and 11 – 14 for immediate prosecution. Applicants reserve the right to file one or more divisional applications for the non-elected claims.

REMARKS

After entry of the foregoing amendment, claims 1 – 20 are currently pending in this application. New claims 17 – 20 have been added to more distinctly claim subject matter which the Applicants regard as the invention. No new matter has been introduced into the application by this amendment.

Election/Restriction

Restriction to one of the following groups of claims is required by the Examiner under 35 U.S.C. 121:

I. Claims 1-4, and 11-14, drawn to optimum mode determination and delivery;

II. Claims 5-8, drawn to latency minimization;

III. Claims 9-10, drawn to data delivery safety; or

IV. Claims 15-16, drawn to data delivery apparatus.

Applicants have elected the Group I claims, claims 1 – 4 and 11 – 14, with traverse. In order to more particularly point out the interrelationship of claims 1, 5, 7, 9, and 15, new claims 17 – 20 have been added. Claims 17 – 20 depend from claim 1, and recite all the features of claims 5, 7, 9, and 15, respectively. Since all the features of claims 5, 7, 9, and 15 are recited in new claims 17 – 20, which depend from claim 1, claims 5, 7, 9, and 15, are not be patentably distinct from claim 1.

To make out a proper restriction requirement, the examiner must determine that there is *no relationship between the inventions claimed* (Manual of Patent Examining Procedure (MPEP) §§ 808.01(a) and 808.02). MPEP §808.01 explains that claims recite independent inventions when "they are not connected in design, operation, or effect under the disclosure of the particular

application under consideration." The four groups are linked together by the same patentable features of claim 1. It is respectfully submitted that the amended claims in the instant application are sufficiently related to one another such that examination will not place an undue burden on the examiner. Accordingly, the restriction requirement is no longer proper.

In addition, the examiner cannot show that there would be a serious burden if restriction was not required. Even if the claim groups are separately classifiable, as posited by the examiner, it would not be a serious burden on the examiner to search all groups of claims, as now amended, since the examiner will be going over the art applicable to all groups when searching the elected Group I claims. That is, in searching the claims directed to determination of optimum mode and delivery, the examiner will inevitably search art pertinent to latency minimization, data delivery safety, and data delivery apparatus. Thus, there would be no serious burden on the examiner if restriction were not required, because the examiner will be required to search the same art for all groups of claims.

In light of the foregoing amendments, it is respectfully submitted that the four groups are no longer, if they ever were, patentably distinct, and that examination of all the claims in the application is proper.

CONCLUSION

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

In view of the foregoing amendment and remarks, Applicants respectfully submit that the present application, including claims 1 – 20, is in condition for allowance, and withdrawal of the restriction requirement and an early Notice of Allowance are earnestly solicited.

Respectfully submitted,

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